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## THE STATE AND SEIGNIORIAL AUTHORITY IN EARLY GERMAN HISTORY<sup>1</sup>

EVEN in our days the ownership of land brings with it political advantages of many sorts. In earlier times this was much more the case; indeed, landed property was then often the very basis for the exercise of political rights. Especially was this true when lands accumulated in a single hand, and when therefore many people outside of the circle of family and household had fallen into a relation of dependence toward the owner and thus relations of seigniorial authority (*Grundherrschaft*) had been formed.

It is well known what comprehensive rights the lords of the land possessed in the period before the extinction of feudal and patrimonial powers, in the era of absolutism as well as in that of organization by estates of the realm: rights attaching to a particular property and rights dependent on the holder's position by birth; the power of a superior over his inferiors, often joined to a right of participation in the central government of the land.

It is not the purpose of this study to follow these relations in their development, in their individual variations and in their generally uniform progress. It is rather my purpose to throw light on a few phases of the relations of seigniorial authority toward the state in the earlier periods of German history—phases which have a bearing on much-discussed and fundamentally important questions: with the question of the origin of the town and of territorial sovereignty. For with the town problem and that of the growth of sovereignty is bound up the question whether seigniorial authority had a part in this development, and if so, in what measure; whether manorial law (*Hofrecht*), a species of law developed in the seigniorial estates, was the basis of municipal law; whether the methods employed by the larger seigniorial domains passed over into those of the administration of cities and of territories; in short what, if any, were the relations of the older organization of seigniorial authority to the institutions of town and territorial government; to those institutions which became the foundation of the whole devel-

<sup>1</sup> A paper read before the International Congress of Historical Sciences at Berlin, August 7, 1908, by Dr. Gerhard Seeliger, professor in the University of Leipzig.

opment of the later and present life of the Germans as a political community.

While on one side it is maintained that seigniorial authority is the true cradle of German territorialism, that out of it the German states were developed, and that it was *the* social power of the earlier Middle Ages, the other side flatly denies that it exercised any profound influence.

It is my intention, starting from facts that are recognized and in their essentials undisputed, to begin by sketching the development of the economic organism of seigniorial authority. I shall then describe its further development into a politically significant community, at the same time keeping the fundamental legal elements distinct from those of historical fact. By this method of approach it will become self-evident in what measure we may assume an influence of seigniorial authority upon the genesis of the town and of the sovereign state (*Landeshoheit*).

Among the ancient Germans each member of a community was allotted a definite share of land for his particular use. Freedom and the right to the use of the land went together; a man's political rights secured him a fixed standing in the agrarian organism; freedom, political rights and economic independence went hand in hand.

It was the institution of private ownership in land which brought about a separation. The result of private ownership is always a social and economic differentiation. The state no longer guaranteed its citizens a uniform economic basis; economic position was thenceforth dependent on the activity and success of the individual. There began to be active a potent individualistic principle, indispensable for all progress, and inevitably attended by important results, both social and political. The freeman who became economically dependent lost his full political independence, while whoever accumulated large property in land won increasing influence, and began to lord it over land and people.

The organization of the landed property which the churches and the lay grandees accumulated was patterned after the Roman system; not, indeed, the Roman system as it originally existed, but that system greatly modified by the addition of German elements, and in the course of historical development to a greater degree Germanized.

Characteristic of the system from the outset was the distinction between demesne land (*Salland*) and tenants' land. Only a small portion of a lord's estate was exploited by the lord himself or by his agent, the *villicus*, who was already known in Roman times; most of the land was in the hands of dependent people. Every-

where seigniorial powers became centralized; and manors (*Fronhöfe*) were established as centres of the seigniorial administration in different parts of the domain, which was sometimes widely scattered. Only occasionally was the estate of a landlord continuous, to the inclusion of whole marks; usually it was composed of numerous separate parcels, sometimes of small extent.

Around the manor stretched the land exploited by the proprietor, the *terra salica* or *indominicata*, and beyond it lay the tenants' land, the holders of which were bound to the manor for dues and services. If the creation of seigniorial property around individual manors was impossible or disadvantageous, the landlords as early as Frankish times contented themselves with the establishment of stations for the collection of rent in the different districts in which their rented land lay. To the manors belonged, however, not alone the tenants, who held land of the lord, but also a number, frequently considerable, of people who were dependents but held none of the lord's land, serfs and freemen who personally stood in a fixed hereditary relation of dependence to the manor, and were charged with the payment of a money rent or with a few days of manorial service during the year.

This is the peculiarity of the economic organization of the seigniorial authority and of its manors, that only a very small number of the people under the lord's authority entirely lacked economic independence, and as servants had to devote all their working power to their lord. The great mass of manorial dependents, the mass of those connected with the manor, although constrained to yield dues and service, yet possessed a certain, sometimes a very extensive, economic freedom, and, spite of continuing subjection, were able to work for themselves and to sell the product of their labor, to amass earnings and to raise themselves to a higher social and economic rank.

The industrial labor needed by the manorial economy was regulated in the same manner as the agricultural. There were industrial laborers who did not act as servants but, like the agricultural tenants, were free to work also for themselves and for the market. On the one hand they stood in a relation of fixed economic dependence to the manor; they were definitely bound, and yet were capable of economic advance.

An exceedingly complex gradation of economic obligations existed among the people of a seigniorial estate; from the serf, who must give all to his lord, to the wholly independent tenant, who owed a small yearly rent or perhaps a day's labor in the year, ran an unbroken series. But almost all, even those closely bound, possessed

the possibility of a free development of their economic powers; even the servant who rendered day-labor won in the course of development a certain economic independence.

It is indeed a momentous fact, important for the whole later development, that seigniorial authority did not seek to bind its subordinates on all sides; that it did not try to mould tenancy into absolute immobility and dependence; that instead it from the beginning left to the great mass of tenants their economic personality, considerable freedom of movement, and the power to accumulate property, not only within the seigniority but outside it; and especially that the class held only by slight personal bonds was given an opportunity to struggle entirely out of the sphere of seigniorial authority. Without regard to the old legal conditions and to the distinction between free and unfree, it built up its organization of labor, admitting freemen and even serfs from outside, and on the other hand allowing its own serfs outside service.

It is necessary for us to take all this into consideration if we are to understand subsequent institutions. The men charged with manorial obligations were thus from the outset fully qualified to take part in a free economic life, even in one that stood outside the bounds of manorial authority; to participate in market activities and urban economic life. Thus seigniorial authority permitted an ebb and flow of social forms, an issue of the predial population from its narrower circle. And thus it was made possible for seigniorial authority itself to act with its organization in the realm of political life and of civil administration, to ally itself with the factors of the state, to assume important public functions and to furnish the very foundation for the development of new and divergent state institutions.

From the beginning seigniorial authority not only bound its subordinates economically, but also sought to govern them politically. Naturally something of the strong patriarchal power of old Germanic days passed over to the later lords of the land. The free tenants, even, had come to a certain extent under the political authority of their landlords. As the state had recognized the authority of the head of the house, so it also recognized that of the later lord of the land. Separate political and judicial districts began to come into existence. Private affairs were settled at home, and not alone agrarian and property questions, but also other matters, civil and criminal. A seigniorial tribunal began to act, the manor court became a court of justice, and at the same time the

manor became the centre of an independent military organization; the foundations of a new communal life were laid.

But these new communities are not created merely by the power of private lordships. The forces which worked in them did not arise out of seigniorial authority alone. Even if a private lordship was able to create for itself an administrative and judicial district of its own, a tribunal of its own for the affairs of its own domain, an unlimited jurisdiction over the serfs of the manor, a limited jurisdiction over all to whom it owed protection; on the other hand there were early added rights conferred by royal grant. Immunities won for the seigniorial estate and seigniorial folk protection from the immediate interference of the royal officials. By the forbidding of these officials to set foot on immune territory or to have direct official dealings with persons protected by an immunity, they created an intermediate seigniorial jurisdiction and brought about the formation of seigniorial courts and military communities of their own. Finally the state recognized the seigniorial court as a court of general jurisdiction, granted it privileges and placed it on the same basis with the state courts, and thus admitted it into the organism of the institutions of the state. This came about in Carolingian times.

Thus did private lordship take into itself elements of state origin. Private and public authority became intermingled, and the whole stood in a position of unconditional subordination to the state, which at that time was vastly expanded, and which in its operation made no halt before private spheres of power. But even if the Carolingian state in its struggle for power in general forced the private authorities, especially those of the church, into its sphere, and made them a part of its organization, it did not render these powers permanently serviceable to itself, but strengthened the private authority. And when therefore in post-Carolingian times the actual dissolution of the bureaucratic state set in, when the powers of the provincial functionaries were treated as private usufruct rights, and were bequeathed, partitioned, sold and mortgaged, then the private authorities, being already equipped besides with elements of public power, were frequently able to combine with these powers those derived from the exercise of public functions in the provinces. And through this there came about not only an internal development and strengthening, but also a territorial rounding out of the lordship.

But not alone through this. Already during Frankish times, the natural endeavor of the lords was toward the territorial completion of their spheres of power. This was attempted in two ways: through the rounding out of the estates, whereby *eo ipso* the lord's

rights obtained a local completeness, and through the extension of the lord's authority over a definite district, without the acquisition of proprietorship in the land, by laying claim to an authority over all the inhabitants of the district, whether dwelling on manorial land or not, whether free or serf, similar to that which existed on an immune estate—to a mediatorship between the organs of the state and the population of the district—to a coercive power. This led to the establishment of *potestates* (a word met perhaps already in this sense since the seventh century) of *districtus*, and the like—of “ban-districts”, as the expression went in many parts of Germany from the tenth century on.

The institution of “lordship”, taking its rise from landholding on a large scale, progressed beyond the realm of landownership and extended over the whole of continuous districts, independently of the expansion of the landed property, those political rights which privileged landed property had acquired. This came to pass both with and without the authorization of the state, and in various ways; through voluntary submission of the inhabitants of a district to the lord's power, through the acquisition of privileges, through usurpation, through purchase. It came to pass also with most various results; for it happened frequently that a single lord acquired the *bannus* in the whole of a village; at other times in one portion only of the village, and sometimes even each landlord exercised the *bannus* in his property. The stable characteristic of this institution of ban-lordship is that rights over territory were established, which must be carefully distinguished from ownership; which neither consisted of property rights nor merely developed out of them.

The ban-lord, indeed, at once demands of his ban-folk submission and dues which often are a simple extension of those demanded of the tenant, and which bind the folk to the manor. And subsequently, especially in the later Middle Ages, the ban-lord frequently lays claim to a species of overlordship over all the land of the district, even demands services and rent from land which was not at all granted by him; and, through the widespread notion of the necessary existence of “lordships” over all open country, such claims were unresistingly recognized. Foundations, which held lands in the banlieue of another, even resigned themselves to this, for the sake of carrying out toward others a similar policy in their own banlieues.

The power of the lords differed in extent. Only the coercive authority was universal, while the jurisdiction bound up with it varied widely. Often only the low justice was won, often high justice, full justice, which effected the separation of the district from

connection with the county (*Grafschaft*), and secured for the districts of the new lordships a position exactly equal to that obtained by the older counties. Thenceforth such a "lordship" did not differ in kind from an acquired county, or portion of a county.

It is evident that, as regards the local exercise of the powers of the state, their distribution and organization, these ban-lordships always possessed a great importance. Such an importance the seigniorial authorities, the lords of the land as such, did not possess. They were not capable of it, from the nature of their authority, or from its territorial extent. Only the seigniorial authority that developed into ban-lordship could win this influence. If we analyze the real nature and the historical source of these "lordships", we perceive that most of their more important social functions did not originate in private lordship, and should not be considered legally as developments of the rights of private lordship; that they are rather an additional acquisition; that the real kernel of the seigniorial power was derived directly or indirectly from the state. But the whole organization of the "lordship" (*Herrschaft*) has nevertheless grown out of the organization of the seigniorial power; historically the whole structure of lordship appears as a gradual development out of the older system of seigniorial authority; the lordship shows itself always homogeneous in its power, exhibits no duality of origin, no distinction between public and private, recognizes only a single body of seigniorial functionaries, a single seigniorial organization. The manors (*Fronhöfe*) had developed courts whose jurisdiction included others than the predials of the manor (*i. e.*, *Dinghöfe*); they were the centre of the whole organization, the seat of the lord, the *burg*; and often as well the centre of a district and endowed with manifold public powers.

If we keep these facts before our eyes, we shall be able to answer the question as to the influence of seigniorial authority on the moulding of the public life, and on the rise of towns and of territories, in a way which surely does not attempt to reconcile the irreconcilable and to bring together things which do not belong together, but which accounts for and finds intelligible the sharp opposition of opinion, and thus endeavors to open the way for a common understanding.

Assuredly the *German town* did not grow out of those seigniorial institutions which concerned the practice of agriculture. Assuredly the lord who aimed at the foundation or the prosperity of a market centre, the inhabitants associated in other ways than those which united the rural population, did not demand agricultural services;

often indeed demanded no services at all, even relinquished dues, expecting to gain the material result in another way, through market tolls and the like, since the slightest possible ties and obligations on the part of individuals served most effectually the general economic prosperity of the seignior.

Still even the older urban community bears a seigniorial character. It is not to be supposed that originally a free community existed, which only later received a lord as lord of the community, in order still later to free themselves again. All the special rights which in the older days were granted by the king were always granted to a lord, never to a community. The free burgher community is a later institution, which sprang from the autonomy granted the inhabitants by the town lord, and from that co-operation and self-direction observable everywhere in Teutonic and Germanic community life. The law of the market settlement, municipal law, is built upon the legal basis of a lordship; the town of the olden time is a seigniorial institution. It is distinct from the rural-agricultural institutions of the seignior; it is established as a differing institution alongside of those which minister to seigniorial authority in the narrower sense. But the distinction was not made because the lord as proprietor exercised here public and there private prerogatives, for both prerogatives appear in both spheres, but because the difference in economic conditions demanded a different handling of the two spheres of lordship, the urban and the rural. And since the distinction is to be conceived as only the natural result of the differing economic requirements, we encounter no absolute and impossible separation of the two spheres of authority, and find almost universally a certain connection between the urban and the manorial administration of the lord. Thus not only were the seigniorial officials of the lord's court active in the city government, but burghers could owe service to the manor. We do not need the artificial explanation that the notices of payments made to the manor by burghers mean imperial taxes or dues to the lords of the community. Men liable to manorial service were not shut out from participation in urban life. If we consider as manorial law (*Hofrecht*) the law issuing from a manor, and regard as subject to manorial law all who in matters of tenure remained under the jurisdiction of the manorial court, then it is to be insisted upon that municipal law and manorial law were not in principle mutually exclusive.

Naturally it was customary for the city-lord to refer jurisdiction in those questions of tenure, which applied to his parcels of land within the civic bounds, to the seigniorial tribunal especially com-

petent in urban matters, the city court. But he could also take another course. When a civic settlement had its roots in an older agricultural one, the old bonds could still hold good, and the burghers, spite of municipal law and civic associations, remain legally bound to the manor. Or in a case where the lord of the town subsequently allowed the citizens to settle on his land, which at first he had left unencumbered by market settlement, he could erect a special seigniorial court, thoroughly in harmony with burgher existence and burgher law.

It must, however, be noted that even though it be unnecessary to distinguish fully and fundamentally between the domains of manorial and municipal law; even though we must admit the possibility of a mutual overlapping of these domains, this by no means should revive the notion that municipal law developed out of manorial law. That which created the special municipal law and the burgher community did not descend from manorial law. Those elements of seigniorial authority which had special sway in the life of the town could have sprung from the soil of private rights, just as little as from that of a communal power. They have, rather, their source in the royal authority, in the rights granted by the king. From this source came that out of which were born the special burgher and urban spheres of jurisdiction.

It is, then, conceivable that as a special sphere of lordship the town was founded and fostered alongside the older sphere of seigniorial authority. Influences of the older seigniorial organization are, indeed, not wholly wanting—it is impossible that they should be; but from the nature of the case this influence was unimportant.

Quite different were the relations to territorial sovereignty (*Landeshoheit*). It is indeed beyond doubt that the *power* of the sovereign lords was not of a seigniorial nature, and not to be conceived of as a development of seigniorial power; that it derives rather from governmental rights, possessed originally by the great Frankish local officials, especially the counts.

Surely it is correct, and it is generally recognized as deserving strong emphasis, that the vague and obscure notions of seigniorial authority as the cradle of state-building should be quite swept away, and that the true legal continuity should be clearly and sharply pointed out.

But the clearing up of the legal relationships does not suffice for the comprehension of historical phenomena. The notion that the power of territorial sovereignty legally had its origin in the state is undoubtedly correct, but it by no means fully explains the forces

potent in the establishment of states. It was long since recognized that the territories by no means always corresponded with the old official jurisdictions, the duchies, counties and hundreds; that much more frequently a correspondence appeared with institutions which originated in forces outside the state. Such observations led to the idea of the universally productive force of seigniorial authority in the formation of states.

To the question whether seigniorial authority exercised an influence we must answer as follows: Seigniorial authority in and of itself did not; its scattered position was enough to make that impossible. But where seigniorial authority developed into a compact ban-lordship, an influence was possible, and it was a very important influence from every point of view.

When ban-lordships had won wider public rights, jurisdiction over life and death and other powers, the sum of which led to sovereignty, when they had emancipated themselves from superior authority and shut out lower authority, they were able to become elements in state-building; adding themselves as new parts to more extensive states, or forming the beginnings of small independent states. Already in the tenth and eleventh centuries, not a few of what were later counties rose from such lordships, and not merely from the partitioning of the old *gau*-counties and the uniting of fragments of old counties.

Moreover the ban-lordships, even when the process of emancipation from a superior authority was not a success, and when they had acquired inferior jurisdiction only, played an important rôle in public life, as patrimonial lordships of various kinds in the states, or as administrative districts of the princely government. For it is especially to be noted that these lordships exercised no little influence even in the great territories which grew out of the highest local offices of the empire, the duchies and margraviates, and that they helped determine the local organization of the government of the country.

It follows, then, that the "lordship" influenced the development of state institutions in two ways. First in the distribution of the public power among the smaller districts, *i. e.*, during the building up of the states; next, in the organization of public functions within the states. In so far as these "lordships" grew out of the seigniorial organization—and this was really their source—the old seigniorial system lived on in state life and influenced the later institutions of the state. To make these connections clear, and to establish the degrees of influence in the different spheres, is a fascinating

and an important historical problem, and one as yet only partially solved.

A few closing words. In the early Middle Ages, the empire formed the German state. To be sure, it was a state quite unlike the state of later centuries and the state of to-day. To be sure, it was not so positively characterized as later by the conception of a political personality, the idea of a community complete in itself, and from its very nature, independent of kinds of government. To be sure, the notion of political lordship then attached itself chiefly to the person of the ruler, and therefore permitted and required a private administration of public powers, an alliance of the state with private lordship. It was not in the cities that first arose a conception of the community, of a commonwealth independent of the lordship of an individual. This already existed in the *Imperium* and the *Regnum*, and, though churchly influences may also have contributed to it, the basal idea of a political community self-established and independent of the individual relations of the ruler was already operative. It was for this reason that the state was never fully broken up into the dominions of private lords. In this sense Germany was never fully feudalized; the separate character of the more important rights derived from the state continued intact, in spite of all private administration; always there remained an association of political functions with the empire, not alone in affairs of high justice through grant of criminal jurisdiction, but also through the superintendence of the king, through occasional putting aside of the royal authority, through effective consciousness that the king was the real source of all political powers. King and empire remained living central powers.

But alongside of the state are at work other possessors of political functions which we are wont to look on as belonging to the state; especially (I omit all mention of the church) *private lordships* and corporations, notably *communities*. It is characteristic of the earlier periods of German history that alongside the state and its organs or deputies, private lordships, too, and corporations (communities) were independently active in the life of society. The reciprocal relation was unsettled, the functions were fluctuating, but they existed as historical forces. And the powers of the three combined in manifold ways; fragments of authority cut away from the empire, functions previously attached to some office, were joined with private powers, private lordships with functions that originated with the commune, and the like.

Combinations of this sort appear also in the building up of new

institutions, which begot a more intensive politico-social life; in the formation of territories and towns. It is surely an important historical problem in what ways *the state*, *private lordship* and the *commune* shared in laying the foundations of the new order and in its development. It is in general quite possible to determine, what has its origin in the state, what in private lordship, especially in seigniorial authority, and what in the early communes; how the old allies itself with the new and begets the new. At any rate, this much is wholly clear: all the essential elements which came to development in the states and the cities, and which lay at the root of new political institutions, originated in the ancient state, in the empire. They are the powers of the empire transferred or carried over to local spheres. That is an assured foundation of research, and should be adhered to in the face of many other opinions. Not from a private, and not from a separate corporate or communal power, do the elements derive which, fostered in towns and territories, have opened the way to a more intensive social life. They have their origin in the empire, in the early state. Elements of the old state have created the bases of the new. These are well-established sequences in the history of law and authority.

But just as the old ideas of corporation and community won a real influence in the German town, although the distinct legal organization of the town did not spring from the soil of a distinct communal power, so the private lordships, the seigniorial authority, exercised an influence on the development of the territories. Seigniorial authority, especially when developed into ban-lordship, was often able to furnish the outer framework for the new territorial institutions or for the administrative circumscriptions within the states; its own organization lived on in the later institutions of the several states. That is its not inconsiderable part in the foundation of the new public powers in Germany.

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